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September 15, 1992

Ms. Donna Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Ellipsat Corporation
CC Docket No. 92-166

Dear Ms. Searcy:

On behalf of Ellipsat Corporation, I am transmitting here-with an original and four copies of its "Motion to Accept Late-Filed Comments" in the above-referenced proceeding.

Should there be any questions concerning this matter, kindly communicate with the undersigned.

Sincerely,

Jill Abeshouse Stern

Jill Abeshouse Stern
Counsel for Ellipsat Corporation

JAS:csg
Enclosures

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SEP 15 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 92-166

Ellipsat is an applicant to construct a low earth orbiting satellite system in the 1610-1626.5 MHz and 2483.5-2500 MHz bands. Its comments relate to the Commission's August 7, 1992 Public Notice which proposes to establish an advisory committee to negotiate technical regulations governing operation in the relevant frequency bands. The negotiated rulemaking process will directly affect Ellipsat's interests. In its comments, Ellipsat therefore confirms its intention to participate in the advisory committee if established, and designates representatives who will negotiate on the company's behalf.

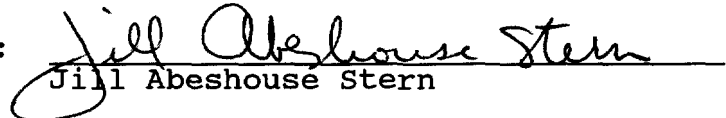
Ellipsat's comments were prepared for filing on September 14, 1992 and a diligent effort was made to file on that date. In fact, Ellipsat's messenger reached the Commission's offices to deliver the filing by 5:30 p.m. However, although the messenger believed that the filing was timely, she was denied entrance to the Commission by the security guard.

For the foregoing reasons, Ellipsat requests that the appended "Comments and Designation of Representatives" be accepted as timely filed.

Respectfully submitted,

ELLIPSAT CORPORATION

By:


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September 15, 1992

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 92-166

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SUMMARY

Ellipsat tentatively supports the Commission's proposal to establish an advisory committee to negotiate technical regulations for mobile satellite service in the MSS/RDSS bands. While Ellipsat has concerns about the efficacy of a negotiated rulemaking approach in the present context, this approach may stimulate a dialogue among the parties and is therefore, on balance, worth trying. However, in order to minimize the possibility of delay, Ellipsat urges the Commission to: (1) restrict participation in the committee to companies with pending applications that are consistent with international regulations; (2) establish a target date of February 1, 1993 for submission of committee recommendations (assuming negotiations begin in November); (3) nominate a neutral facilitator who will guide the process firmly and knowledgeably; (4) expand the agenda to include service rules; (5) reformulate the technical issues to focus on whether the existing technical rules in the MSS/RDSS bands should be revised, with the presumption in favor of retaining the existing rules unless a consensus to the contrary can be reached; and (6) define consensus to mean a majority of the participants rather than unanimity.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of

Establishment of an Advisory
Committee to Negotiate
Proposed Regulations in the
1610-1626.5 MHz and 2483.5-2500
MHz Frequency Bands

CC Docket No. 92-166

COMMENTS AND DESIGNATION OF REPRESENTATIVES

Ellipsat Corporation ("Ellipsat"), by its attorneys, submits comments with respect to the Commission's Public Notice, released August 7, 1992, in which the Commission invites comment on whether to establish an advisory committee to negotiate regulations governing provision of mobile satellite services ("MSS") in the 1610-1626.5 MHz and 2483.5-2500 MHz bands.^{1/} In these comments, Ellipsat also designates the individuals who are authorized to negotiate on the company's behalf.

I.

BACKGROUND AND INTRODUCTION

Ellipsat is one of five applicants proposing to construct and launch a low earth orbit (LEO) MSS system in the

^{1/} Public Notice, CC Docket No. 92-166, DA 92-1085, released August 7, 1992.

1610-1626.5/2483.5-2500 MHz bands.^{2/} On August 7, 1992, the Commission released a Public Notice asking for comments regarding establishment of an advisory committee to negotiate regulations defining the technical rules appropriate to the provision of mobile satellite services in the MSS/RDSS frequency bands. In the Public Notice, Ellipsat is identified by the Commission as one of the parties having a "potential interest" likely to be significantly affected by the MSS service rules, and therefore entitled to participate in the negotiating committee.

The Public Notice identifies two primary issues to be addressed in the negotiations: (1) what technical rules should be adopted so as to maximize the sharing of the spectrum and the capacity for multiple entry; and (2) what technical rules should be adopted in order for the service to co-exist with other allocated services.

Ellipsat has previously filed comments expressing reservations about the feasibility of a negotiated rulemaking approach in the MSS/RDSS band.^{3/} In contrast to the little LEO proceeding, the big LEOS involve diverse technical, marketing and service proposals. In addition, there is a geostationary applicant. This diversity, as Ellipsat pointed out in its previous comments, could make consensus difficult, if not impossible, to achieve in

^{2/} These frequency bands are hereinafter referred to as the "MSS/RDSS bands."

^{3/} See Ellipsat letter, dated May 18, 1992, in CC Docket No. 92-76.

a negotiated rulemaking. Indeed, even in the little LEO proceeding, it appears that a consensus as to technical issues will not be possible.

Although Ellipsat remains concerned about the utility of a negotiated rulemaking in this context, it shares the Commission's desire to find creative solutions that will expedite service to the public. In addition, Ellipsat acknowledges the possibility that a negotiated rulemaking could have a positive impact by stimulating a dialogue among the applicants, and between the applicants and allocated users of the relevant bands.

For these reasons, Ellipsat tentatively supports the Commission's proposal to establish an advisory committee. However, if a negotiated rulemaking approach is adopted, Ellipsat urges that appropriate steps be taken to minimize delay and to maximize the usefulness of the committee. Ellipsat recommends that the following steps be taken:

(1) restrict participation in the committee to companies with pending applications that are consistent with international regulations;

(2) reformulate the technical issues to focus on whether the existing technical rules in the MSS/RDSS bands should be revised, with the presumption in favor of the existing rules;

(3) expand the agenda to include service rules;

(4) define consensus to mean a majority of the participants rather than unanimity.

(5) establish a target date of February 1, 1993 for submission of committee recommendations (assuming negotiations begin in November); and

(6) nominate a neutral facilitator who will guide the process firmly and knowledgeably.

If the Commission should decide to establish an advisory committee, Ellipsat will participate and negotiate in good faith, and these comments express its commitment to do so. Dr. David Castiel, Chairman and CEO of Ellipsat, is designated herein as Ellipsat's official representative on the advisory committee. However, the following individuals are also designated as representatives of Ellipsat and authorized to participate in the advisory committee and associated working groups on the company's behalf to the extent that their expertise may be required: Jill Abeshouse Stern, Esquire; Gerald Helman; Jack Naughton; and Dr. Jim Brown.

II.
NEGOTIATED RULEMAKING MAY NOT BE
A SUITABLE APPROACH FOR THE BIG LEOS

Ellipsat supports the use of alternative dispute resolution procedures in appropriate cases. As Congress has correctly recognized, consensual approaches to resolving disputes can "reduce

transaction costs while ensuring a well-founded policy decision."^{4/} Although Ellipsat generally supports the use of negotiated rulemaking procedures, and endorses the Commission's efforts to explore creative approaches in the big LEO proceeding, it continues to have concerns that a negotiated rulemaking approach might not be suitable for the big LEOS and could ultimately delay introduction of service.

As Ellipsat previously pointed out, in its May 18, 1992 letter to the FCC in the little LEO proceeding, the big LEO circumstances differ in several significant respects from those of the small LEOS. In addition to the greater number and diversity of applicants, serious questions exist as to whether the technical proposals of Motorola and the other big LEOS can be harmonized. Sharing between LEO and geostationary satellites is also a potential issue.^{5/}

The record in this proceeding documents the controversial nature of the technical issues, and the incompatibility of the spread spectrum and non-spread spectrum systems. Of particular concern, while the four spread spectrum systems have previously indicated a willingness to harmonize their systems, no such

^{4/} See House Report No. 101-461 at 8.

^{5/} The Commission has properly dismissed Celsat's rulemaking petition for use of the RDSS frequency bands. See Notice of Proposed Rulemaking and Tentative Decision, ET Docket No. 92-28, released September 4, 1992 at para. 15. Celsat therefore does not have any interest in the subject frequency bands and is not entitled to participate in the negotiated rulemaking.

effort has been made by the non-spread spectrum systems. Instead, Motorola has proposed a band segmentation approach pursuant to which it would use 10 MHz of the most desirable L-band spectrum, leaving the four remaining systems with 6 MHz to "share."

These circumstances suggest the difficulty of achieving a consensus among the parties on the fundamental technical issues. Indeed, a consensus appears unlikely to be reached even in the little LEO proceeding which involves fewer applicants and less complex systems. Ellipsat is therefore concerned that the negotiated rulemaking process will be used for further delay and, potentially, to tax the resources of the companies involved in the proceeding. The Commission should be alert to these possibilities, which would undermine the very goals of the negotiated rulemaking process.^{6/}

III.

IF THE COMMISSION ADOPTS A NEGOTIATED RULEMAKING APPROACH, THE COMPOSITION AND SCOPE OF THE COMMITTEE SHOULD BE LIMITED

Although Ellipsat has concerns about the ultimate efficacy of a negotiated rulemaking process, it tentatively supports the establishment of an advisory committee because of the possibility

^{6/} According to the Negotiated Rulemaking Act of 1990 (NRA), Pub. L. 101-648, November 28, 1990, two important considerations in determining the need for an advisory committee are the existence of a "reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time" and that this approach "will not unreasonably delay the notice of proposed rulemaking and the issuance of the final rule." (NRA, §583(a)(4) and (a)(5)).

that a negotiated rulemaking will, at least, stimulate discussions among the parties and ventilate the issues more fully. If the Commission should ultimately conclude that negotiated rulemaking is an appropriate approach, Ellipsat strongly urges that the following steps be taken by the advisory committee and/or the Commission to ensure that the negotiated rulemaking will be a useful and expeditious process.

A. REDEFINE SCOPE OF NEGOTIATIONS

1. Expand Negotiation to Include Service Rules

The committee deliberations should be expanded to include service rules. There is a possibility that the committee could make a valuable contribution in this regard.

2. Reformulate Technical Issues

In order to minimize delay, and maximize the contribution of the advisory committee, the Commission should focus the negotiations on what, if any, changes to the technical rules should be adopted to maximize sharing. As formulated in the Public Notice, the technical issue is framed as "what technical rules should be adopted for this service." This formulation incorrectly implies that a "blank slate" exists in this proceeding.

To the contrary, the committee is not starting from "ground zero" as it did in the little LEO proceeding. There is an existing regulatory scheme in the MSS/RDSS bands based on a prior

Commission policy determination that spread spectrum provides the best means of accommodating multiple systems in the MSS/RDSS bands. Ellipsat questions whether the Commission can override this prior policy determination through a negotiated rulemaking.

In other words, the proper focus of the advisory committee is whether the existing rules should be changed and, if so, to what extent. If no consensus can be reached, the existing rules remain in place. The burden should be placed on those seeking to change the rules to convince other members of the advisory committee that such change is necessary.

B. LIMIT PARTICIPANTS TO COMPANIES WITH APPLICATIONS THAT ARE CONSISTENT WITH INTERNATIONAL REGULATION

The Commission should limit participation to (1) existing users of the bands; and (2) applicants proposing to provide MSS in the relevant bands whose applications are consistent with international regulations. This definition excludes Celsat and AMSC.

1. Celsat

The Commission should promptly reject Celsat's application for membership. Celsat should not be allowed to participate formally in the committee. Celsat's application for membership, filed September 3, 1992, should be rejected on the grounds that its rulemaking petition has been dismissed and it is not an applicant to provide MSS in the affected bands.

2. AMSC

The Commission should not allow AMSC to participate formally in the advisory committee. It is Ellipsat's understanding that international technical rules will preclude AMSC's proposed operation in the MSS/RDSS bands. In addition, the Commission has chosen not to allocate one of the paired frequency bands sought by AMSC in ET Docket No. 92-28. Not only is AMSC unable to operate technically in the relevant frequency bands without a major system redesign, but Ellipsat has concerns about the message that AMSC's participation would send to the international and financial communities as to the strength of the U.S. commitment to LEOS.^{7/} In addition, AMSC has a motive to delay the LEO proceedings as it moves forward to implement its authorized geostationary satellite system in other bands. Ellipsat has no objection to AMSC's observation of and attendance at advisory committee meetings, as long as it is not a formal participant.

C. DEFINE CONSENSUS TO MEAN MAJORITY

Section 582 of the Negotiated Rulemaking Act defines consensus as unanimous concurrence. However, the Act authorizes the committee to agree upon an alternative definition. In this case,

^{7/} For example, Ellipsat notes that AMSC's participation could strengthen EC and CEPT objections to the LEOS, and give credence to international concerns about U.S. intentions in the MSS/RDSS bands. AMSC participation could also complicate global coordination which presumes that the relevant bands are designated for LEOS.

it is important that a working definition of consensus be reached which precludes one participant from preventing agreement. In the event that consensus cannot be reached, the majority should be permitted to record its views without participation by the minority, with corresponding privileges to the minority. Assuming that unanimity is not likely to be achieved, majority rule may represent the most expedient means of achieving the committee's goals and contributing to the rulemaking process.

D. SHORTEN NEGOTIATION PERIOD

In the Public Notice, the Commission proposes March 1, 1993 as a target date for submission of the committee's recommendations. Assuming that the committee begins meeting in November 1992, three months -- until February 1, 1993 -- should be more than enough time for the committee to complete its work. It will be readily apparent whether there is a reasonable likelihood of consensus, and there is no need to delay the proceedings.

E. SELECT APPROPRIATE FACILITATOR

It is important that a neutral facilitator be selected who will manage the negotiation process in a way that ensures an expeditious resolution of the committee's tasks. It is important for this individual to be knowledgeable about the issues involved, and to ensure that the process moves forward

expeditiously. Preferably, it should be a person who was a member of the official U.S. WARC-92 delegation.

IV.
PARTICIPATION BY ELLIPSAT
IN ADVISORY COMMITTEE

In the Public Notice, the Commission identified Ellipsat as a potential interested party in a negotiated rulemaking procedure. Any such proceedings would indeed have far-reaching and profound effects on the business operations of Ellipsat, and, if an advisory committee is established, Ellipsat will participate and negotiate in good faith. The names and addresses of Ellipsat's representatives are designated in Exhibit A hereto. While Dr. Castiel is Ellipsat's official representative, all of the persons designated in Exhibit A are authorized to represent the company in meetings of the advisory committee and associated working groups to the extent that their expertise is required.

V.
CONCLUSION

For the foregoing reasons, Ellipsat tentatively supports the Commission's proposal to use negotiated rulemaking for developing technical rules appropriate for the MSS/RDSS bands. If the Commission should adopt a negotiated rulemaking approach, Ellipsat

strongly recommends that appropriate steps be taken, in accordance with the suggestions above, to facilitate and expedite the negotiated rulemaking process.

Respectfully submitted,

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By:

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September 14, 1992

EXHIBIT A

EXHIBIT A

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CERTIFICATE OF SERVICE

I, Carla S. Gales, hereby certify that a copy of the foregoing document was served by first-class mail, postage prepaid, this 15th day of September, 1992 on the following persons:

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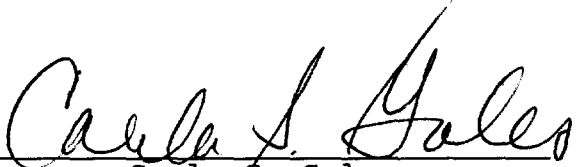
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